

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY DeFRANCO,	:
	:
Plaintiff,	: Case No.:C.A.-04-230-ERIE
	:
vs.	: MAGISTRATE JUDGE BAXTER
	:
WILLIAM WOLFE, et al.,	: DISTRICT JUDGE COHILL
	:
Defendants.	:
	:

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APPEAL OF MAGISTRATE JUDGE'S ORDER

Plaintiff, Anthony DeFranco, appeals to the District Judge, the Order issued by Chief Magistrate Judge Baxter (DOC.#120) denying his motion for a subpoena for documents, pursuant to Local Rule 72.1.3B, and in support avers:

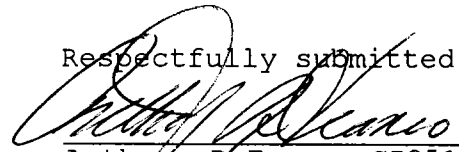
1. Plaintiff filed a motion for subpoena, asking the Court to issue a subpoena upon the Defendants to turn over all the vote sheets conducted on his "z-code" from the years 1999 through 2005. As these vote sheets bear directly upon his complaints and averment that he was retaliated against.
2. Plaintiff further requested that he be provided with the documents regarding the issuance of z-code status at SCI Smithfield.
3. In denying the motion the Magistrate Judge stated that 1). Plaintiff failed to informally ask the Defendants to turn these documents over, and 2). that the requested documents are not 'evidentiary findings'. Plaintiff submits that they are

"evidentiary documents" that bear directly upon the case, his complaint and the pending motion to dismiss.

4. These documents are no more than six (6) pages and would create no hardship on the Defendants as the documents are in Plaintiffs counselor's office.
5. Plaintiff has subsequently requested (informally) the documents from Defendants counsel. Based upon the alleged retaliation claims made by Plaintiff, that deal directly with the requested documents, Plaintiff asks this Court to issue an Order that the documents be turned over to him forthwith.<sup>1</sup>

WHEREFORE, Plaintiff prays this Honorable Court to vacate the Order and direct the defendants to turn over the requested documents.

Respectfully submitted,



Anthony DeFranco CZ3518  
10745 Route 18  
Albion, Pa. 16475-0002

Date: September 27, 2005

**CERTIFICATE OF SERVICE**

Service of the foregoing was made  
by US First Class Mail this date to  
the Attorney General, 564 Forbes Ave.,  
Pgh., Pa. 15219.

<sup>1</sup>

Plaintiff did subpoena these documents for the December 17, 2004 preliminary injunction hearing however, Plaintiffs prison counselor failed to produce the file, and the Defendants counsel advised her not to produce it (see, Preliminary hearing transcript 12/17/04).